IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3978 OF 2004

Shri Anil Umrao Gote ... Applicant

versus

1) The State of Maharashtra;

2) The Central Bureau of
Investigation, Mumbai. ... Respondents

...

Mr. P.M. Pradhan, for the Applicant.

Mr. A.S. Gadkari, A.P.P., for Respondent No.1.

Mr. V.T. Tulpule, Senior Counsel, for Respondent No.2.

...

WITH

CRIMINAL APPLICATION NO. 3979 OF 2004

Shri Anil Umrao Gote ... Applicant

versus

1) The State of Maharashtra;

2) The Central Bureau of
Investigation, Mumbai. ... Respondents

...

Mr. A.P. Mundargi, with Ms. S.D. Khot and Mr. Maheen Pradhan, for the Applicant.
Mr. D.R. More, A.P.P., for the Respondent No.1.
Mr. V.T. Tulpule with Mr. Raja Thakare and Mr. A.M. Chimalkar, for Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

3rd November 2004

ORAL JUDGMENT :

1. This Common Order will dispose of both the above-numbered Criminal Applications filed by the same Applicant, who has been named as Accused No. 45 in connection with offence registered with Bund Garden Police Station, Pune, known as Stamp Scam case. By Criminal Application No. 3979 of 2004, the Applicant prays that he be released on bail in connection with the alleged offence, whereas Criminal Application No. 3978 of 2004 is filed questioning the decision of the learned Special Judge, Pune, dated July 23, 2004, below Exhibit 396, rejecting the Applicant’s prayer for discharge from the alleged offence and

to set him at liberty. After the investigation, charge sheet has been filed against the concerned accused, including the Applicant, accused No. 45. Insofar as the Applicant is concerned, the charge against him is as follows (pages 82 to 85 - paras 111 to 123 - of Crl.Appln. No. 3979 of 2004) :

> "111. As stated herein before, one handwritten note book maintained by accused Khalid Abdul Sattar Badami (A-26) containing the details of financial transactions was seized. This note book revealed that the below mentioned amounts were given to Anil Umrao Gote (A-45) from time to time.
>
> | Sr.No. | Date | Amounts |
> |---|---|---|
> | 01 | On 28.12.2001 | Rs. 1 lac |
> | 02 | On 25.01.2002 | Rs. 1 lac |
> | 03 | On 01.03.2002 | Rs. 1 lac |
> | 04 | On 19.02.2002 | Rs. 1 lac |
> | 05 | On 23.03.2002 | Rs. 1 lac |
> | 06 | On 23.03.2002 | Rs.1,000/- |
> | 07 | On 10.04.2002 | Rs. 5 lakhs |
>
> 112. Abdul Karim Ladsab Telgi (A-23) was arrested by the Bangalore Police as early as in the month Nov. 2001 in a case of Counterfeit Govt. Stamps and Stamp Papers and though he was in custody Anil Umrao Gote (A-45) continued to receive undue pecuniary advantage from the ill gotten gains of the Organized Crime Syndicate frequently as mentioned in the note book and stated herein above. The above mentioned note book was therefore sent to the State Examiner of Questioned

Documents for Handwriting Expert's opinion. The expert has opined positively on the handwriting of Khalid Abdul Sattar Badami (A-26). Thus it was clear that Anil Umrao Gote (A-45) who is a Public Servant by virtue of the fact that he is an MLA had received illegal gratification other than legal remuneration with a view to gain pecuniary advantage for himself from the activities of the Organized Crime Syndicate without any public interest.

113. Investigation revealed that the accused Anil Umrao Gote (A-45) a member of Legislative Assembly of Maharashtra elected in 1989 from Dhule Constituency was very closely associated with the prime accused Abdul Karim Ladsab Telgi (A-23) since 1993. Anil Umrao Gote (A-45) is also the President of Samajwadi Janata Party, Maharashtra.

114. The close association of Anil Umrao Gote (A-45) with Abdul Karim Ladsab Telgi (A-23) is revealed from the records of Kisan Trust, Dhule which trust was founded by Anil Umrao Gote (A-45). One of the main pre-condition in the bye-laws of the trust was that no person could become a trustee of the said trust unless he was an ordinary resident of Dhule District. In order to overcome this hurdle and induct Abdul Karim Ladsab Telgi (A-23) as a trustee of the Kisan Trust, the residential address of this accused was shown as 1321, Galli No. 4, Dhule which is in fact the residential address of Anil Umrao Gote (A-45). The statements of the office bearers of Kisan Trust namely Parasmal Hukumchand Tathed (Treasurer), Ramesh Jairam Parkhe (Assistant), Jitendra Sohanlal Sewak (Assistant), Dipak Purushottamdas Shah (Accounts Assistant), Anand Raghuvir Pednekar (employee) and Govind Vithal Varute (Assistant) have been recorded. The witnesses have deposed that deliberate manipulations have been

carried out and the records have been fabricated with a view to conceal the association of Anil Umrao Gote (A-45) with Abdul Karim Ladsab Telgi (A-23).

115. The accounts of Kisan Trust, Dhule when scrutinized revealed that these accounts had also been fabricated and funds which had flowed in and had been provided by Abdul Karim Ladsab Telgi (A-23) had deliberately been camouflaged by making false receipts in the names of prominent personalities like Ram Jethmalani, MP and Lalit Suri also a MP etc. both these personalities when examined have flatly denied having given any donations whatsoever to Kisan Trust, Dhule. Hence the only logical conclusion is that the amount namely, Rs.1,11,000/- reflected in the accounts as a donation by Abdul Karim Ladsab Telgi (A-23), Rs.5 lakhs reflected in the accounts as a donation by Ram Jethmalani, MP, Rs. 5 lakhs reflected in the accounts as a donation by Lalit Suri, MP and advances amounting to Rs.15,20,000/- purportedly having been given by Dilip Madhav Agraharkar and seven others were in fact all funds provided by Abdul Karim Ladsab Telgi (A-23) to Anil Umrao Gote (A-45) through the Kisan Trust, Dhule.

116. Statement of witness and confessions of the accused persons recorded in this case reveal that Anil Umrao Gote (A-45) was frequently visiting the office and printing press of Abdul Karim Ladsab Telgi (A-23) from where the illegal activities of the Organized Crime Syndicate were being conducted. On 16th Jan. 1996 Abdul Karim Ladsab Telgi (A-23) was declared as a proclaimed offender by Metropolitan Magistrate, Mumbai and whilst such a proclamation was in existence on 17th Nov. 1997 Abdul Karim Ladsab Telgi (A-23) was present at a public function of Kisan Trust, Dhule arranged by Anil Umrao Gote (A-45).

117. Investigation revealed that accused Anil Umrao Gote (A-45) had used his political clout to obtain a Govt. Stamp Vending License for accused Abdul Karim Ladsab Telgi (A-23) as far back as in the year 1994. In the year 1995 and later in the year 1999, Abdul Karim Ladsab Telgi (A-23) was arrested in Counterfeit Stamp cases in Mumbai and Hyderabad and this fact was widely published in all the major news papers. In the year 1995, the Govt. Stamp Vending License of Abdul Karim Ladsab Telgi (A-23) had been cancelled by the Supdt. Of Stamps as he had misused the said license.

118. During the scrutiny of documents seized during the search on 10.06.2002 at 13, Botawala Chambers, Fort, Mumbai from where counterfeit Govt. Stamps and stamp papers worth Rs.140,13,75,720/- were seized, one photocopy of a letter on the letter head of Ram Jethmalani, Minister, Urban Affairs and Employment, Govt. of India, New Delhi dtd. 2.06.1998 addressed to Shri Yashwant Sinha, Hon'ble Minister of Finance, North Block, New Delhi along with its two enclosures consisting of copies of letters addressed to the General Manager, India Security Press and the Jt. Secretary (Currency & Coinage) Govt. of India, Ministry of Finance by Ganga Prakash, the then DGM, ISP, Nasik and also a document purporting to be a production programme and targets for the year 1998-1999 (April 98 to March 99) prepared by Kamta Prasad, Dy. Gen. Manager, ISP, Nasik have been seized. In order to confirm the veracity of this letter, further investigation in this regard was carried out. Shri Ram Jethmalani, MP was examined when he stated that Anil Umrao Gote (A-45) had brought Abdul Karim Telgi (A-23) to him for recommendation of Ganga Prakash for promotion and at his (Anil Gote's) request, Shri Ram Jethmalani had forwarded the said letter to Shri Yeshwant Sinha, the then Minister for

consideration.

119. Shri Ganga Prakash, has stated that he had some grievances regarding his promotion as General Manager and since Abdul Karim Telgi (A-23) assured him of using his political connections to approach Finance Ministry, he had given a file containing the above letters to Abdul Karim Telgi (A-23). Investigations revealed that both Anil Umrao Gote (A-45) and Abdul Karim Telgi (A-23) had traveled to Delhi from Mumbai by Air on 26.11.1998 and stayed at Hotel Ashoka, New Delhi and the payment of the bill for this stay at Delhi was made by Abdul Karim Telgi (A-23).

120. It has also come in the investigation that the accused Anil Umrao Gote (A-45), vide his letter on letter head dtd. 08.02.2001, written to the Chairman, BEST, Mumbai requested to allow Abdul Karim Telgi (A-23) to pay Rs.3,64,473/- towards Electricity charges of Yousuf Manzil (Alankar Guest House) in 10 installments.

121. The above fact clearly establishes that Anil Umrao Gote (A-45) used his political connections in favour of accused Abdul Karim Telgi (A-23) against considerations of pecuniary benefits and undue economic advantages from the illegal activities of the Organized Crime Syndicate headed by the kingpin Abdul Karim Ladsab Telgi (A-23).

122. Anil Umrao Gote (A-45) and Abdul Karim Ladsab Telgi (A-23) had also stayed at Hotel Diplomat, New Delhi during the period from 28.10.1999 to 30.10.1999.

123. Investigation reveals that accused Anil Umrao Gote (A-45) whilst at Mumbai, used to stay at a luxurious Hotel Ritz, Churchgate, Mumbai during the period from 1997 to June 2003 and the payment for the same amounting to Rs.30,91,440/- was made

> in cash. On being given an opportunity to explain the source of these funds, Anil Umrao Gote (A-45) could not give any satisfactory explanation and the only conclusion drawn is that this payment is made from the illegal pecuniary gains obtained from the activities of the Organized Crime Syndicate. . . ."

The abovesaid prosecution case is founded on the materials collected during investigation including the statements of Altaf Nasipudi Rashana Ankalesariya, Nilesh Kelkar, Vijay Salunke, co-accused Tabrez Telgi, Ramesh Parakhe, Dilip Agraharkar, the then Union Minister Ram Jethamalani, and confessional statements of co-accused Uday Savant, Sirajuddin Nasipudi, Dashrath Sawant, Vijay Sawant, Laxman Tirveer. Besides, the prosecution is relying on the panchnamas as well as handwritten note book recovered which was maintained by Accused No. 26 containing details of financial transactions mentioning substantial payment made to the Applicant from time to time, records of Kisan Trust, Dhule, which are stated to be fabricated to create camouflage by showing that the prime accused Telgi had ceased to be trustee and further that amounts were deposited as donation in the trust in the name of personalities like

Ram Jethamalani, M.P. and Lalit Suri, M.P., who, in turn, have denied having contributed such substantial amount. Prosecution is also relying on the material which would indicate that the Applicant had used his political clout for securing Government Stamp Vending Licence for the prime accused Abdul Karim Ladsab Telgi and in similar manner espoused the cause of the prime accused before the BEST, Mumbai. The prosecution is also relying on the record to indicate that the prime accused spent on the hotel bills for the Applicant during his stay in luxurious hotel in Mumbai as well as New Delhi. The materials on record not only point out towards the close association of the Applicant with the prime accused, but his involvement in facilitating the illegal and unlawful activities of the prime accused and in return receiving pecuniary benefits. In substance, the prosecution case is that the case on hand is one of well-planned conspiracy hatched by the prime accused Abdul Karim Ladsab Telgi through the members of the Organized Crime Syndicate with the active help of public servants, politicians and bureaucrats, which activities were incessantly carried on

since 1993 by manufacturing and selling the counterfeit Government stamps and stamp papers, acquiring and possessing equipments, machinery and materials for committing forgery, etc. It is the prosecution case that there is material on record to indicate that even after the arrest of prime accused Abdul Karim Ladsab Telgi, who was lodged in Karnataka Prison, the Applicant herein was in constant touch with the prime accused and thus was a co-conspirator, so as to further the unlawful and illegal activities of the Organized Crime Syndicate. On the above basis, the Applicant is facing trial for offences punishable under sections 120-B, 419, 420, 467, 468, 471, 472, 473, 474, 475, 476, 34, 109 of the Indian Penal Code, read with section 3(1)(ii), 3(2), 3(4), 3(5), 4 and 24 of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "the MCOCA").

2. Mr. Pradhan, learned Counsel for the Applicant, on the other hand, submits that the Applicant deserves to be discharged. He has essentially advanced three-pronged submissions to contend that the Applicant deserves to be

discharged in relation to the alleged offence. The first contention is that there is no valid approval for recording of the information about the commission of the offence of organized crime under the MCOCA as required by section 23(1)(a) of the Act. If it is so, no investigation could have proceeded with in connection with the said offence nor the Applicant can be forced to suffer the trial, for the same being without jurisdiction. To support this contention, reliance was placed on the dictum of the Apex Court reported in 1995(5) S.C.C. 302 in the case of Anirudhsinhji Karansinhji Jadeja and another v. State of Gujarat. It is next contended that there is no evidence on record to attract the provisions of the special enactment, namely, MCOCA, and for which reason, the Applicant will have to be discharged in relation to offences under MCOCA. It is then contended that there is no evidence on record to establish the link of the Applicant in relation to the alleged offence. It is contended that even if the prosecution evidence is accepted as it is, the role of the Applicant is only limited to involving the prime accused in the affairs of the Kisan Trust of

which the Applicant was the Chairman. Besides, the evidence would indicate that the Applicant had introduced the prime accused to personalities like Ram Jethamalani, for getting recommendations in connection with the press licence. And similarly, the Applicant had made recommendation for relaxing the payment of electricity charges to BEST Committee. But there is nothing to show that the prime accused had any causal connection with the Alankar Guest House, for which such recommendation was made. It is further contended that merely because the Applicant had shown the address of prime accused, which was his personal address, so as to make the prime accused eligible for being elected as trustee of Kisan Trust, that will be of no avail and cannot be the basis to assume that the Applicant was himself member of the organized crime syndicate. On the same argument, it is contended that merely because amounts in the name of personalities like Ram Jethamalani and Lalit Suri were deposited, it cannot be assumed that the said amounts were contributed by the prime accused Telgi; and even such amounts were to be contributed by Telgi, that will make no difference, because the

contribution was made to Kisan Trust which was a public trust and not received by the Applicant as pecuniary benefit for himself. It is also contended that the prosecution case that the Applicant was in constant contact with the prime accused Telgi even after he was declared as proclaimed offender is of no relevance, for it is seen that the prime accused has been attending public functions even thereafter, and shared the dais along with the State dignitaries. It is contended that merely because the Applicant maintained contact with the prime accused, that by itself cannot be the basis to invoke stringent provisions of the MCOCA qua the Applicant. Reliance was placed on the unreported decision of this Court in Sameer Madan Patil v. The State of Maharashtra decided on 29th January 2003 in Criminal Application No. 1381 of 2002. Insofar as documents recovered by the prosecution during search are concerned, it is contended by Mr. Pradhan that the same are of no avail because the entries in the said diary mentioned name as "Anna", which is a common or generic name. It is also contended that most of the instances, which are pressed into service by the prosecution, are

for the period prior to coming into force the Act of 1999 and if it is so, the same cannot be reckoned and cannot be made basis for applying the offences punishable under the MCOCA. On the above arguments, Mr. Pradhan contends that the Applicant deserves to be discharged and the Court below has committed manifest error in rejecting the application for discharge preferred by the Applicant.

03. Mr. Mundargi, learned Counsel for the Applicant to support the prayer for bail, in addition to the arguments canvassed by Mr. Pradhan, submits that the charge against the Applicant is that he had received substantial amounts from the prime accused Telgi and had maintained close association with the prime accused since 1993, made Telgi trust of Kisan Trust and fabricated record to show that he has disassociated himself from the prime accused, deposited huge donations in the name of personalities, which amount was obviously received from prime accused Telgi, used political clout to obtain Government Stamp Vending Licence

for the prime accused. He further submits that the supplementary charge sheet filed would further indicate that the Applicant maintained constant contact with the prime accused Telgi, who was lodged in Karnataka Jail. Relying on the observations of this Court in the case of Bharat Shantilal Shah & others v. State of Maharashtra, reported in 2003 Bom.C.R.(Cri) 947, Mr. Mundargi contends that expression "abetment" has been defined in the Act and unless there is material to show that the Applicant's association was in aid or assistance to anything done by the organized crime syndicate, according to him, mere social association of the Applicant with member of the organized crime syndicate by itself will not make the Applicant liable for the alleged offence. He contends that even any assistance rendered by the Applicant, assuming that he had knowledge that the prime accused was a criminal, that is of no consequence. According to him, to attract the provisions of the special enactment, there should be material on record to show that the Applicant had intentionally or knowingly facilitated the commission of an organized crime or that he had knowledge that the property,

namely, the amount received from the prime accused Telgi was a tainted property. He further submits that the receiving of unaccounted wealth only after the Act has come into force at best will attract offence under section 4 of the Act. He submits that even assuming that the Applicant had tried to tamper with the record of the Kisan Trust, that would only indicate that the intention of the Applicant was to distance himself from the prime accused Telgi, but such an act cannot be said to be offence under the special enactment. The learned Counsel appearing for the Applicant have taken me through the relevant statements and the record to contend that the material which has come on record was not sufficient to hold that any offence, much less offence under the provisions of the MCOCA has been made out against the Applicant. Learned Counsel contends that on examining the materials already on record, this Court may proceed to hold that there are reasonable grounds to believe that the Applicant is not guilty of the alleged offence and enlarge the Applicant on bail. Learned Counsel contends that the material on record does not support the prosecution case that

the hotel bills or the travel bills of the Applicant were paid by prime accused Telgi. According to the learned Counsel for the Applicant, the relevant materials have been collected only after the Applicant came to be arrested, so as to falsely implicate the Applicant in the alleged offence. This has been done out of political rivalry.

04. On the other hand, Mr. Tulpule, learned Counsel for the prosecution submits that there is no substance in any of the arguments canvassed on behalf of the Applicant either in support of prayer for discharge, or, for that matter, grant of bail. He submits that there is sufficient material on record to connect the Applicant with the commission of the alleged crime. According to him, it is not open for this Court to ascertain the truth in the prosecution evidence, but the Court will have to only prima facie sift and weigh the evidence to find out whether there is some material on record to connect the Applicant with the alleged offence; and if it is so, both the prayer for discharge as well as for bail will have to be rejected. Insofar as the

argument about the invalidity of registration of offence under the special enactment is concerned, learned Counsel contends that the same is ill-founded. He has relied on the record, which indicates that originally the offence was registered under the ordinary law, but during the investigation, it transpired that the nature of offence was such that it attracted the provisions of special enactment, namely, MCOCA. Thereafter, approval was obtained from the appropriate authority, who, in turn, has accorded the same; only whereafter the provisions of MCOCA have been applied to the pending case. He submits that such a course was legitimate and, therefore, the argument that the entire action is without jurisdiction for want of valid approval is without any basis. He further submits that on reading the materials on record and taking the totality of circumstances into account, it is not possible to take the view that there is no sufficient material on record to frame charge in connection with the alleged offence. Learned Counsel has placed reliance on the unreported decision of our High Court in the case of Babanrao Tukaram Ranjane v. The State of

Maharashtra, decided on 3rd September 2004 in Criminal Application No. 2252 of 2004, to contend that the argument regarding validity of approval accorded for recording of information under the MCOCA has already been considered and rejected. Accordingly, it is not open for this Court to take a different view in the matter. Learned Counsel for the prosecution contends that further investigation of the case is in progress and during the further investigation, additional material has become available to the investigating agency. Compilation of the additional material which included transcript of the intercepted telephonic conversation between the Applicant and prime accused Telgi have become available, copy whereof was made available to me for my perusal.

05. Having considered the rival submissions, I have no hesitation in observing that both the applications preferred by the Applicant herein, accused No. 45, can be disposed of together, inasmuch as on account of special provisions under section 21(4) of the Act, no Court can enlarge the accused named in the commission of

offence under the special enactment, unless the Court was to be satisfied that there are reasons to believe that the Applicant is not guilty of the alleged offence and also that if released on bail, he is not likely to jump the bail. Even while considering the prayer for discharge, the Court will have to apply the same principle, namely, to sift and weigh the evidence on record to find out whether there is some material to frame charge against the accused. Accordingly, I thought it appropriate to dispose of both these applications by this common Order.

06. Coming back to the main argument advanced on behalf of the Applicant, that no valid approval has been accorded in the present case, as was required under section 23(1)(a) of the Act, three-fold arguments have been raised. It is first contended that no approval is obtained for recording of information as against the Applicant in connection with the alleged offence at all. It is next contended that assuming that the approval has been granted, the same is not valid, because Mr. Jaiswal was not competent to grant approval under section 23(1)(a) of the Act,

as he himself was the investigating officer. It is next contended that the proposal for approval itself was defective and the authority instead of granting approval has proceeded to straightaway grant sanction as was required by section 23(2) of the Act. Before I proceed to examine these aspects, it is appropriate to advert to section 23 of the Act. Section 23 of the Act reads thus:

> "Cognizance of, and investigation into, an offence. ---
>
> (1) Notwithstanding anything contained in the Code,---
>
> (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
>
> (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.
>
> (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police."

On plain reading of the above provision, it is seen that it obligates obtaining of prior approval of the police officer not below the rank of the Deputy Inspector General of Police before recording of the information about the commission of an offence of an organized crime under the Act. To that extent, Mr. Pradhan has rightly relied on the observations in the decision in Anirudhsinhji Jadeja's case (supra). However, what has been overlooked is that the offence under the MCOCA is not an independent offence, but going by the relevant provisions of the Act, it would necessarily follow that any activity, which is a continuing unlawful activity by an individual singly or jointly either as member of the organized crime syndicate or on behalf of such syndicate, which is a cognizable offence punishable with imprisonment of three years or more, in respect of which more than one charge sheet have been filed before the competent Court within the preceding 10 years and that Court has taken cognisance of such offence, such successive unlawful activity by itself becomes an organised crime. In other words, the singular unlawful

activity would attract the provisions of ordinary law, but if it is continuing one, and, to wit, third offence of specified type which fulfils the requirement of provisions of the Act, it becomes an organised crime to be registered as an offence under the MCOCA. In such a situation, there are two options available to the police, either they can separately record information about the commission of an offence of organised crime under the Act after successive unlawful activity of the specified type are reported to have been committed, by or for and on behalf of organised crime syndicate; or invoke the provisions of the said enactment to the unlawful activity already reported, which is the successive in point of time. In either case, however, the police are obliged to obtain prior approval from the officer not below the rank of the Deputy Inspector General of Police. In the present case, the police have followed the later option. It is seen that offence under the ordinary law (Indian Penal Code and Bombay Stamp Act) was registered as CR.No. 135/2002 at Bund Garden Police Station on 7th June 2002. As it was noticed that the offence would attract the provisions of the

MCOCA, a proposal was submitted by the investigating officer of the Bund Garden Police Station for giving prior approval for invocation of the provisions of the MCOCA on 9th July 2002 in respect of the named accused at the relevant time. In response to the said proposal, Mr. Mahesh Gauri, Joint Commissioner of Police, granted approval under section 23(1)(a) on 3rd September 2002, albeit restricted his approval in respect of only two accused. It is only thereafter the provisions of MCOCA have been invoked in the present case. In that sense, prior approval has been granted before invocation of the provisions of MCOCA in the present case. However, it was argued on behalf of the Applicant that as the approval granted for recording of information in respect of commission of offences under the Act was only in respect of the two accused, therefore impliedly rejected in respect of others. This submission, however, overlooks that approval for recording of information of commission of offence under the Act is always in respect of the offence and not qua the offender. In other words, although the approval granted by the designated officer makes reference to only

two out of the several accused, that will make no difference. If any other argument was to be accepted, it would follow that before naming any other accused other than the two referred to in the order of approval, even if their involvement is noticed from the materials collected during the investigation, it would be necessary for the investigating officer to seek a fresh approval. That cannot be countenanced. For, the police is not required to record a separate information of the commission of offence against the accused found to be involved in the offence under the Act from the materials collected during the investigation but only name him in the offence already registered. The safeguard with regard to persons who have been named subsequently during the investigation or after the approval for recording of information is provided by the Act at the stage of taking cognizance of the offence; as section 23(2) provides that no Special Court shall take cognizance of any offence under the Act without the previous sanction of the Police Officer not below the rank of Additional Director General of Police. Be that as it may, it will be preposterous to accept the argument that section

23(1)(a) postulates that whenever any person is to be named or proceeded with as an accused involved in the offence under the Act, which is already registered after taking prior approval, once again approval for recording of information under that provision has to be obtained with reference to such person. Counsel for the Applicant, however submits that the material on record would indicate that even the understanding of the investigating agency was that prior approval to proceed against other accused was necessary and the proposal in that behalf was submitted. It was also argued that it was not open to submit new proposal for approval unless the earlier order of Mr. Mahesh Gauri, Joint Commissioner of Police, was challenged before the Court of Law and was set aside. To my mind, submission of fresh proposal for approval under section 23(1)(a) with regard to other accused will make no difference if that was not the requirement of law. Some subsequent proposal submitted under mistaken belief by the officers as referred to above cannot be the basis to hold that there was no prior approval for recording of information of offence under the Act at all as is

contended, or, that the approval as granted was invalid. Besides, there was no need to challenge the order of approval as granted by Shri Mahesh Gauri as, in law, the approval was for recording of information of the offence. In the present case, as mentioned earlier, provisions of MCOCA came to be applied only after obtaining prior approval of the competent authority. It cannot be disputed that Mr. Mahesh Gauri was the competent authority, as he was of the rank of Joint Commissioner of police, which is above the rank of Deputy Inspector General of Police. In my opinion, some clerical error occurring in the proposal for approval cannot be the basis to rule that the prior approval as granted was invalid. For, the mistake occurring in the proposal or the approval order can always be explained during the trial. If it is so, the argument canvassed before me that the authority instead of granting approval straightaway proceeded to grant sanction under section 23(2) of the Act is of no avail. Accordingly, there is no substance in the grievance made that there was no prior approval at all for recording of information of commission of offence of organized crime under the Act as

contended. Whereas, the approval granted by Mr. Mahesh Gauri, Joint Commissioner of Police, Pune, by itself, was sufficient compliance of the requirement of section 23(1)(a) of the Act.

07. On the above reasoning, it will not be necessary to examine the next argument about the competence of Mr. Jaiswal, D.I.G. (S.I.T.) in granting approval under section 23(1)(a) of the Act on the proposal submitted by the investigating officer, C.H. Wakade, Additional Superintendent of Police, as he himself was the investigating officer. To my mind, however, there is no infirmity in the order as passed by Mr. S.K. Jaiswal, DIG, SIT. For, Mr. S.K.Jaiswal was appointed as Head of the Special Investigation Team (SIT) to make indepth investigation and follow up action in the bogus stamp case. The Resolution issued by the Government of Maharashtra dated 2nd November 2002 clearly spells out this position. It further provides that Shri S.K. Jaiswal, DIG, was to be assisted by one Deputy Commissioner of Police, one Assistant Commissioner of Police, three Inspectors of Police, whose names were to be

decided by the Director General of Police. It is also seen that when the proposal was submitted, at the relevant time, the investigating officer was named as Mr. C.H. Wakade, Additional Superintendent of police to DIG, who was appointed by Shri Jaiswal to investigate into the matter and in turn after investigation has presented the charge sheet. In that sense, Shri Jaiswal was not the investigating officer in the case as such. If it is so, Shri S.K. Jaiswal was competent to exercise powers under section 23(1)(a) of the Act, as he was above the rank of Deputy Inspector General of Police. To get over this position, it was argued that Shri S.K. Jaiswal had recorded statements of some witnesses in this case and was, therefore, incompetent to accord approval. This argument overlooks the fact that in the first place, there is nothing on record to show that Shri S.K. Jaiswal had examined any prosecution witness in connection with the alleged offence prior to 22-12-2002 when he had accorded approval under section 23(1)(a) of the Act. Besides, I have no hesitation in accepting the argument canvassed by Mr. Tulpule that Mr. Jaiswal has not recorded the statement

of prosecution witness in connection with the alleged offence, but in relation to an incidental inquiry which was required to be undertaken. In my opinion, therefore, there is no substance in the argument that Shri Jaiswal was incompetent to accord approval for recording of information of commission of offence of organized crime in the fact situation of the present case.

08. Much stress was placed on the decision in the case of Anirudhsinhji Jadeja (supra). That decision, however, deals with a different situation. In that case, the authority who was otherwise competent to accord prior approval forwarded proposal to the Additional Chief Secretary of the Home Department for permitting him to invoke the provisions of sections 3 and 5 of the T.A.D.A. In this backdrop, the Apex Court proceeded to hold that it amounted to abdication or non-exercise of power by the concerned authority, for which reason, in law, there was no approval accorded. Whereas, in the present case, I have already held that proper approval has been granted by the competent authority and that approval will enure in relation to the offence

and not the offender. Even the unreported decision pressed into service by Mr. Tulpule in the case of Babanrao Ranjane (supra) proceeds to hold that approval granted by Mr. Jaiswal was valid. Besides, the view expressed in the unreported decision is that no separate information about the commission of offence of organized crime under the Act needs to be recorded, but it is open to the police agency to apply the provisions of MCOCA at a later stage by following the necessary procedure provided by law. I am in agreement with the said conclusions for the reasons recorded hereinbefore. Viewed in this perspective, it is not necessary to elaborate on other aspects canvassed before me on the correctness of the opinion recorded in the said decision on other matters.

09. I shall now straightaway consider the question as to whether the materials on record was sufficient to proceed against the Applicant, or, is it possible to take the view that there are reasons to believe that the Applicant is not guilty of the alleged offence. On perusal of the record and in particular the statements of the

witnesses and of co-accused as referred to in paragraph one above, prima facie, there is material to suggest that the Applicant had close association with prime accused Abdul Karim Ladsab Telgi. The association was not only limited to social contacts, but the Applicant has taken active part in facilitating the illegal activity undertaken by the prime accused Telgi. The Applicant used his political clout to secure necessary licence, which facilitated the prime accused to accomplish his design. There is material on record which would suggest that the Applicant, in turn, took pecuniary benefit, for himself as well as huge deposits and donations for the Kisan Trust of which he was the Chairman. The Applicant took the prime accused Telgi as trustee of the said Trust and to make him eligible to be trustee provided the address of his residence. There is material on record that the Applicant had knowledge about the antecedents and the activities of the prime accused. Nevertheless, the Applicant has maintained close association but also facilitated the continuing unlawful activities of the prime accused Telgi. The documents recovered during the search would

support the position that the Applicant has received substantial pecuniary benefits. The confessional statements of the co-accused would also indicate the involvement of the Applicant. The evidence on record clearly suggests that the Applicant not only facilitated commission of organized crime, by the organized crime syndicate, and was part of the conspiracy, but the involvement of the Applicant is established from the evidence of witnesses as well as the confessional statements of the co-accused. The Court below has rightly adverted to all the materials on record and reached at a conclusion that there was sufficient material to connect the Applicant with the alleged offence. The charge is one of conspiracy and there are incriminating circumstances, which, if considered collectively, will be sufficient to frame the charge. On perusal of the said materials on record, I am in agreement with the conclusion reached by the Court below that there is sufficient material to connect the Applicant with the commission of the alleged crime. The evidence which is already on record cannot be disbelieved at this stage, nor it is open for this Court to enter into the

argument of preponderance of probabilities. If the materials on record are taken as it is, as is required to be done at this stage, the only conclusion that would follow is that there is enough material on record to connect the Applicant with the commission of offence of organized crime, at any rate of facilitating the same. To my mind, the Court below has applied the correct legal position in sifting and weighing the materials on record. There is no error either in the approach or the conclusion as reached by the Court below while considering the application for discharge. Viewed in this perspective, the prayer for discharge as pressed into service on behalf of the Applicant will have to be rejected. Applying this reasoning, it necessarily follows that it is not possible to take the view that there are reasons to believe that the Applicant is not guilty of the alleged offence. In such a situation, the bar under section 21(4) of the Act would operate and the Court will have no discretion to enlarge the Applicant on bail. Besides, having regard to the complexity of the case and the seriousness of the charge, the apprehension of the prosecution is

that if the Applicant is released on bail, he would tamper with the prosecution evidence being an influential person and the possibility that he may jump the bail also cannot be lightly brushed aside. If it is so, even the second condition under section 21(4) of the Act remains unfulfilled, for which reason the Court will have no discretion to grant bail to the present Applicant in relation to the alleged offence.

10. Although lengthy argument was canvassed before me inviting my attention to each document, I have chosen not to elaborate on the said argument in the present judgment, so as to obviate any prejudice being caused one way or the other, at the trial; because I am presently called upon to consider the limited question as to whether the materials on record would permit proceeding against the Applicant in relation to the alleged offence and is it possible to take the view that there are reasons to believe that the Applicant is not guilty of the alleged offence. In any case, it is made clear that the trial Court shall proceed to deal with all the questions on its own merits at the trial

uninfluenced by any observations made in this judgment. I have also avoided in adverting to the further material collected by the investigating agency in the course of further investigation after the filing of the charge sheet against the Applicant inasmuch as in my view, the present material on record was sufficient to answer the point in issue. Similarly, so far as the question as to whether it is open to file discharge application when investigation is already in progress, it is not necessary for me to answer the same for the reasons already recorded above.

11. Accordingly both the applications fail and the same are dismissed.

(A.M.KHANWILKAR,J.)